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APPOINTMENT OF KING'S COUNSEL IN WAR-TIME.

IF an endeavour were made to ascertain the views of the actively practising lawyers of this Dominion upon the subject of the appointment of King's Counsel, and the conditions that should attach to such appointments a considerable difference of opinion would undoubtedly be found to exist. Some would express themselves in favour of the present system: that of prohibiting the appointee from practising as a solicitor or in partnership with a solicitor. Others would be in favour of a return to the position which prevailed here before 1915—namely, to allow the appointee to continue to practise both as a barrister and as a solicitor. Others again, while recognizing that King's Counsel may be a firmly-established institution in England, where no solicitor practises as a barrister, and no barrister as a solicitor, may take the view that in this country, where ninety-nine out of every hundred barristers practise also as solicitors, it is unnecessary and inadvisable to make, even in peace-time, any further appointments of King's Counsel. Those who hold this view would, no doubt, stress that the patent of King's Counsel has its origin and justification in professional conditions peculiar to England and the very reverse of those prevailing in New Zealand. And they would, no doubt, direct attention to the fact that it was only as recently as 1907 that the first appointments of King's Counsel were made in this Dominion.

But, while professional opinion may differ, and differ markedly, on those questions, there is no reason to doubt that the profession, with one voice, would say that it is proper that there has been no further appointment of King's Counsel during the present war-period, and that there should be no such appointment till the present war is over and until sufficient time has elapsed thereafter to allow conditions within the profession to return to normal.

When reviewing the position in New Zealand, the matter must be approached in a realistic way, and with regard to the facts as they actually exist in this country. In such review, we naturally turn first to consider how our existing King's Counsel are affected by the present war-time conditions and how they would be affected if further appointments were made while the war continues. There are at present nine King's Counsel in New Zealand; but three of them are not in active practice in the Courts, and another is the Solicitor-General, who holds a salaried office and has no right to private practice. Those four gentlemen, therefore, could be in no way prejudiced by any new appointments. But what of the remaining five King's Counsel? When one has regard to the facts, one finds that one of them (at what must be a very considerable financial sacrifice) has become a member of the Temporary Staff of the Army and will be engaged on whole-time military duties until the war is over. Further, three, at least, of the others are, in their civilian capacities, engaged for part of their time as members of public tribunals instituted for purposes connected with the war; and, in addition, one of these three holds the office of Judge-Advocate-General, the duties of which position are in war-time by no means inconsiderable. It would be presumptuous for us to discuss individual cases in greater detail. We have already said enough to demonstrate quite clearly that, from the point of view of our existing King's Counsel, it would not be fair to appoint any new silks until the war is over.

But the matter by no means ends with the effect of fresh appointments upon the existing holders of the distinction. We must consider the profession as a whole—the general practitioners. Of their number, very many are serving with the forces, either overseas or in New Zealand. When the history of this country's war-effort comes to be written, the services and the sacrifices of these lawyers will fill glorious pages. Among the general practitioners in uniform there are undoubtedly several whose claims to be appointed King's Counsel could hardly be denied if times were normal and they chose to make the required application. It would be wrong to suggest here the names of individuals. On the other hand, it would be much more wrong to take individual cases of serving lawyers and assert that those particular lawyers would never desire to make application for the patent. Such an assertion would be the wildest guess-work, and very unfair to the persons most vitally concerned. No one can predict the state of affairs which will exist when this war is over, or predict the prospects of the solicitors' side of the profession as those prospects will then appear. But it is by no means inconceivable that conditions may be such as to lead some (who would

not otherwise have thought of doing so) to confine themselves to barristerial practice and make application for the patent. Obviously it would be unfair to these men to make any appointments until peace comes and they have had an opportunity of returning to civilian life and considering the situation as they then find it.

And then there are the younger general practitioners on service with the forces. Those whom the war has temporarily removed from the ranks of the younger lawyers are necessarily the very cream of those who will be charged in the future with the duty of carrying on the traditions of the profession. On their return to private practice it will be the duty of those who have remained to give them every possible assistance to build up their practices again. But those who remain have another duty: the duty to safeguard their interests in their absence. Now, the elevation of leading general practitioners to the rank of King's Counsel necessarily makes opportunities available to younger men desirous of building up practices in barristerial work. When appearing in Court, a King's Counsel must, except in special cases, have a junior counsel briefed with him. Thus every appointment of King's Counsel means a greater availability of junior briefs. Further, when a new King's Counsel is created, he deliberately drops certain work which was previously part of his practice. Moreover, he necessarily loses a good deal of other work the importance of which does not justify the dual expense of solicitors' charges and King's Counsel's fees. And, again, there is the purely solicitor's work which he previously did, but is prevented from doing by the conditions attached to his elevation.

If new King's Counsel were appointed during the war the effect would be that the younger general practitioners serving with the forces would be debarred from taking advantage of the opportunity made available by the appointment. The junior briefs, and the work deliberately relinquished, and the work necessarily lost by the new King's Counsel, would fall as the prize of the younger men now remaining in the ranks of the profession. It is no fault of these latter that they are not themselves serving with the forces, but the fact remains that it would be unfair to give them further advantages at the expense of their fellows, and thus further facilitate the building-up of connections and standing which will be a decided handicap in their favour when the war is over. It can be said with confidence that the practitioners remaining in practice have no desire to *seek* any such unfair advantage. And it can be said with equal confidence that they would not desire to have such a situation *thrust* upon them.

Even now we have not exhausted the matter. At the present time there are in practice quite a number of general practitioners who, if times were normal, could not be refused silk if they chose to apply for it. It is true that they are not in uniform and may not be actively engaged in official work directly associated with the prosecution of the war; they may simply be carrying on their practices. But they are practising under most abnormal conditions. Almost without exception they have partners and clerks serving with the forces, and they are under obligation to those partners and clerks to keep the firm's practice together as far as possible, and to do all in their power to ensure that when their partners and clerks return from the war, the practice will be still in existence and its connections as far as possible retained. The serving partners are vitally concerned that this be done; and the interest of the serving clerks is really no less. Now, in the cases of senior general practitioners so circumstanced, it would be quite impossible for them to make application for appointment as King's Counsel while the war lasts or for some time thereafter. For, under the present law regulating King's Counsel, they would be compelled to leave their firms and abandon their solicitors' practices—a step which would mean dishonouring their obligations to their serving partners and clerks. It may perhaps be that there are one or two senior practitioners eligible for elevation who are in the fortunate position of not being subject to these obligations to such an extent as to prevent them from leaving their firms: but, if there be any such, they must be few indeed. It would not be right to open the door to them while it is necessarily shut against their fellows.

The factor just mentioned can have no application in England, where no barrister can have a partner, and where a barrister has no staff other than a single clerk who is shared with a number of other barristers. But, in New Zealand, there is no doubt that it affords one of the most cogent reasons against the making of any further appointments until sufficient time has elapsed after the conclusion of the war to enable conditions in the profession to return to normal. It is thus apparent that, when one has regard to conditions as they actually exist in this country, the reasons against the creation of King's Counsel in war-time are even stronger than they are in England.

It can be confidently stated that it is now the established rule in England that new King's Counsel should *not* be created in war-time. The rule began to become formulated during the 1914–18 War and has become firmly established during the present war. October, 1914, when the last War had been in progress only for two months, and when England thought that war could be conducted while "business" was carried on "as usual," saw (with the exception of the much criticized action of Lord Finlay in August, 1917) the last normal creation of King's Counsel: normal appointments were not resumed until April, 1919, when thirty-nine new silks were created.

The correspondence which passed in December, 1915, between the then Attorney-General (Sir Frederick Smith) and the then Lord Chancellor (Lord Buckmaster) is interesting. Lord Buckmaster expressed in unequivocal terms his intention not to make any further appointments until the conclusion of the War. The Attorney-General wrote as follows:

House of Commons, S.W.,

15th December, 1915.

MY DEAR LORD CHANCELLOR,—

I trust you will excuse me calling to your attention the fact that no appointments have been made to the office of King's Counsel since October, 1914. It is, of course, well understood that the question of what members of the Bar should be recommended to the King for the grant of the dignity of King's Counsel is decided by the Lord Chancellor alone, and that the Lord Chancellor should not be invited by any member of the Bar to indicate the course which he proposes to take in this matter. In ordinary circumstances, therefore, I should not think it proper to communicate with you on the subject. The circumstances, however, of the present time are exceptional, and I think it right to inform

you that in my opinion the Bar would understand your decision should these circumstances lead you to postpone taking steps to recommend the appointment of new King's Counsel. I hope you will allow me, without breach of the understanding to which I have already referred, to inquire whether, under present conditions, it is your intention to make any recommendations to His Majesty in the immediate future.

Yours sincerely,

FREDERICK SMITH.

This is the Lord Chancellor's reply:

House of Lords, S.W.,
15th December, 1915.

MY DEAR ATTORNEY,—

It is true that no appointments have been made to the office of King's Counsel during the last fourteen months. This is not necessarily too long a period to elapse between the dates of such appointments. But as I do not propose to make any further recommendations to the King in the immediate future, I think the Bar may rightly be informed of my intention and the reason which lies behind. The removal of juniors in good practice is the opportunity to which all young men rightly look for the purpose of establishing or improving their position at the Bar. It is almost the only event which diverts the steady stream of legal business from its customary channel, and increases the chance of even the youngest man to gather work. It is unnecessary to tell you what a splendid response has been made by members of our profession to the national demands; this must be known to all, but it is not so generally realized that in the large majority of cases the men who have gone have left at the most critical moment of their professional career. In these circumstances it is the first and obvious duty of every one to see that they did not suffer by their patriotism, and that no unnecessary opening is made in the ranks of the profession during their absence. Unless, therefore, some unforeseen and special exigency requires an appointment to be made, I do not propose to make any recommendation to the King until the war ends, and I am permitted by His Majesty to state that this course meets with his entire approval.

Yours sincerely,

BUCKMASTER.

In 1916 Lord Buckmaster was succeeded in the Lord Chancellorship by Lord Finlay. The latter, in August, 1917, appointed four new silks, and the making of these appointments gave rise to considerable dissatisfaction and was the subject of strong criticism. The *Law Journal* (London) of August 4, 1917, described Lord Finlay's action as "somewhat surprising," and declared that it was "certainly not obvious" why Lord Finlay had "deemed it expedient to depart from the principle of his predecessor." The *Law Times* (London), in its issue of the same date, was even more outspoken. It noted Lord Finlay's action "with great regret," and said that there was "a very strong objection to the creation of any King's Counsel at the present time."

On the day following the Armistice, Lord Finlay, who still held the Lord Chancellorship, but who was to relinquish it two months later, wrote to the Attorney-General stating that he proposed "*at some convenient date in the near future*" to make recommendations to His Majesty for the grant of silk. This letter prompted the *Law Times*, in its issue of November 23, 1918, to make the following comment:—

> The letter from the Lord Chancellor to the Attorney-General, which we print in another column, announces the intention to create King's Counsel in the near future. Four years have elapsed since any calls within the Bar have been made, with few exceptions, and the approach of peace makes it very desirable for further promotions to be made. We hope, however, that sufficient time will elapse to enable those who are still away serving their country to make their applications so that no one will suffer in seniority owing to absence on duty.

Apparently Lord Finlay's letter created fears that he would be too precipitate in resuming the making of appointments. For, in its issue of December 7, 1918, we find the *Law Times* saying:

> According to rumour, a very large number of applications have been made to the Lord Chancellor for call within the Bar. In making the selections for submission to His Majesty, war service—naval, military, or civilian—should be a principal factor, and, as we have already stated, sufficient time should be allowed to elapse to enable those who are still away serving their country to consider their positions and, if need be, to make their applications.

In January, 1919, Lord Finlay retired from the Chancellorship and was succeeded by Sir Frederick Smith, thenceforth Lord Birkenhead. Lord Birkenhead, so recently of the Bar, had a clear understanding of conditions in the profession. In February, 1919, he wrote to Sir Gordon Hewart, who had succeeded him in the Attorney-Generalship, suggesting that April, 1919—*i.e.*, six months after the termination of hostilities—would be a suitable time to resume the making of appointments. That Lord Birkenhead's decision was favourably received is shown by the following comment in the editorial column of the *Law Times* in its issue of February 22, 1919:—

> It is satisfactory that rumour has proved correct and the list of new King's Counsel will not be issued till the beginning of April. As we have pointed out, everything should be done not to prejudice those who have been serving their country in His Majesty's forces, both in the way of giving time for consideration to those who intend to apply for call within the Bar and allowing such of those who intend to remain as juniors to participate in the work which will be released. It is now assumed that in two months demobilization will be sufficiently advanced to ensure that the members of the Bar who are returning to the profession will not have their interests endangered by the creation of new "silks."

Lord Finlay's criticized action has not been repeated in England during the present war. Careful search made in the sources available in the Wellington libraries at the time of writing has failed to reveal the appointment of any English King's Counsel since the war began. Indeed, it would appear from these sources that no English King's Counsel has been appointed since February, 1939—*i.e.*, over six months before the present war began. In peace-time the normal practice in England is to create something like twelve or fifteen new silks each year.

No one can suggest that the conditions prevailing in New Zealand at the present time require the appointment of any new King's Counsel. If there should be any practitioners desirous of the patent, they can suffer no hardship from having their claims deferred.

The Journal in Tripolitania.—The LAW JOURNAL is now circulating in Tripolitania. In fact, it has appeared in all the conquered territories in North Africa as soon as our troops became established in them. This information is conveyed in a recent letter from Captain J. C. White, M.B.E., who kindly distributes to practitioners in the New Zealand Expeditionary Force the copies of the JOURNAL which the Publishers have supplied to them while on active service.

SUMMARY OF RECENT JUDGMENTS.

SUPREME COURT. Christchurch. 1943. February 12, 17, 25. *Northcroft, J.*

DONNITHORNE v. QUARTLEY.

Licensing—Offences—Licensing Act Emergency Regulations—Supply of Liquor during Closing-hours—"Supply"—Liquor purchased during Lawful Hours with Permission to remove during Prohibited Hours—Whether a "supply" of Liquor during latter Hours—Licensing Act Emergency Regulations, 1942 (No. 2) (Serial No. 1942/186), Reg. 3 (1).

Where there has been a sale of liquor in licensed premises during permitted hours, and permission has been given to remove it during prohibited hours, the permission to remove, or even assistance in such removal, does not constitute a "supply" of liquor during the time when the licensed premises are required to be closed within the meaning of Reg. 3 (1) of the Licensing Act Emergency Regulations, 1942 (No. 2).

Williams v. *Pearce*, (1916) 80 J.P. 229; *Rhodes* v. *Bowden*, (1907) 26 N.Z.L.R. 1097, 9 G.L.R. 555; *Bristow* v. *Piper*, [1915] 1 K.B. 271; and *Emerson* v. *Hall-Dalwood*, (1917) 52 J.P. 50, referred to.

Consequently, where a licensee made a lawful sale of beer, which was paid for, during the hours when licensed premises were entitled to be open for sale, and the purchaser asked the licensee to put the beer aside for him, which was done, and the purchaser called during hours when the licensed premises were required to be closed and was given the beer and assisted to remove it to the door of such premises, whereupon the Police intervened and the beer was not removed from the premises, there was no "supply" during prohibited hours, but merely an attempt or preparation for the removal of liquor from the licensed premises after the hours of closing, which removal is prohibited by the regulations.

Counsel: *D. W. Russell*, for the appellant; *A. W. Brown*, for the respondent.

Solicitors: *D. W. Russell*, for the appellant; *Raymond, Stringer, Hamilton, and Donnelly*, for the respondent.

Case Annotation: Williams v. *Pearce*, E. & E. Digest, Vol. 30, p. 115, para. 843; *Bristow* v. *Piper, ibid.*, p. 96, para. 733; *Emerson* v. *Hall-Dalwood, ibid.*, p. 114, para. 841.

SUPREME COURT. Hamilton. 1943. February 15, 26. *Johnston, J.*

BOATSWAIN AND ANOTHER v. CRAWFORD.

Nuisance—Fire—Unknown Origin—Fire while controllable within Knowledge of Owner of Land on which it Started—Fire spreading to neighbouring Land—Duty of abating Nuisance continuing with Knowledge—Statutes Amendment Act, 1940, s. 28—Fires Prevention (Metropolis) Act, 1774 (14 Geo. 3, c. 78), s. 86.

An occupier of land who fails to take reasonably prompt and efficient means to abate a nuisance or potential nuisance after he has actual or presumed knowledge of its existence while still controllable is responsible therefor, even though he neither created such nuisance nor derived any benefit from it.

Sedleigh-Denfield v. *O'Callaghan*, [1940] A.C. 880, [1940] 3 All E.R. 349 (the effect of which is to overrule *Hunter* v. *Walker*, (1880) 6 N.Z.L.R. 690), followed.

Slater v. *Worthington's Cash Stores (1930), Ltd.*, [1941] 3 All E.R. 28, referred to.

Thus, where a fire of unknown origin began on C.'s land and, while it was still controllable, neighbours informed C. of the fire and requested assistance to fight it, but nothing was done by C. and the fire later crossed the boundary between the lands of C. and B. and spread to and did damage to B.'s property,

Held, allowing an appeal from a nonsuit of B. in an action against C. for damages, 1. That, on the evidence, C. or his servants knew or ought to have known of the fire at least at a time when it was easily controllable, and C. had accordingly such knowledge of the fire as put upon him the duty of taking steps to abate the continuing nuisance; and he had acted negligently and in disregard of the danger in that he had failed to take any reasonable steps to extinguish the fire.

2. That, in the circumstances of the case, the Fires Prevention (Metropolis) Act, 1774 (14 Geo. 3, c. 78), provided no defence.

Job Edwards, Ltd. v. *Birmingham Navigations*, [1924] 1 K.B. 341, referred to.

Counsel: *W. J. King*, for the appellants; *J. F. Strang*, for the respondent.

Solicitors: *King and McCaw*, Hamilton, for the appellants; *Strang and Taylor*, Hamilton, for the respondent.

Case Annotation: Job Edwards, Ltd. v. *Birmingham Navigations*, E. and E. Digest, Vol. 36, p. 214, para. 575; *Sedleigh-Denfield* v. *O'Callaghan, ibid.*, Supp. Vol. 36, para. 575a.

COMPENSATION COURT. Wellington. 1943. February 16, 23. *O'Regan, J.*

CHAPMAN v. THE KING.

Workers' Compensation—Liability for Compensation—Worker seriously injured—Compensation paid Weekly over Four Years—Offer of additional Lump Sum—Compensation refused—Worker found to be working under Award Rates in excess of pre-injury Wages—Offer withdrawn and Fifty Pounds Offered in full Settlement—New Offer rejected—Jurisdiction—Declaration of Liability—Prima facie *Evidence of regaining Pre-accident Earning Capacity—War-time Abnormal Demand for Labour considered—Workers' Compensation Act, 1922, s. 28.*

A worker suffered injury while working as a labourer, and 214 weeks' compensation was paid. His leg was seriously shortened, and there was permanent total disability of 75 per cent. His employer offered him an additional lump sum as compensation, but he refused it. It was then found that he had commenced work as a porter-barman under award wages in excess of what he had received as a labourer at the time of his injury. On learning this, the offer of compensation was withdrawn, and a new offer of £50 in full settlement was made, but this was not accepted.

On a claim for balance of full compensation, ninety-nine weeks in all,

Held, 1. That as the case was not within s. 28 of the Workers' Compensation Act, 1922, the Court had no jurisdiction to make a declaration of liability in favour of the suppliant.

Deeming v. *Mayor, &c., of Newmarket*, (1913) G.L.R. 439, followed.

2. That, as there was *prima facie* evidence in the suppliant's receipt of award wages that he had regained his pre-accident earning capacity, the Court could not award more than the compensation offered and could not have regard to the fact that it was due to the abnormal demand for labour owing to war conditions that the suppliant was earning such wages although under normal conditions he would probably find difficulty in securing employment.

Heathcote v. *Haunchwood Collieries, Ltd.*, [1918] A.C. 52, 10 B.W.C.C. 647, applied.

Denholm and Co. v. *Jackson*, (1926) 19 B.W.C.C. 92, distinguished.

3. That the Court could award no more than the compensation offered.

Counsel: *J. A. Grant*, for the suppliant; *H. R. Cooper*, for the respondent.

Solicitors: *Jacobs and Grant*, Palmerston North, for the suppliant; *H. R. Cooper*, Crown Solicitor, Palmerston North, for the respondent.

Case Annotation: Heathcote v. *Haunchwood Collieries, Ltd.*, E. and E. Digest, Vol. 34, p. 395, para. 3230; *Denholm and Co., Ltd.* v. *Jackson, ibid.*, p. 396, para. 3231.

THE MEANING OF "ILLEGITIMATE."

Legitimation for the Legitimate.

The case of *Taylor* v. *Harley*, [1943] N.Z.L.R. 68, presents points of interest. Considerations of space preclude a statement of the facts and issues presented, for which the reader must be referred to the *Law Reports*.

"Illegitimate in Fact."

The first point is the introduction of a new concept, that of a person "illegitimate in fact": p. 73, line 29, p. 74, lines 2, 9, and 24, and, in the inverted form "in fact illegitimate," p. 74, line 44. Hitherto it is believed that illegitimacy, as the derivation of the word suggests, has been solely a question of legal status; dependent, no doubt, like any other legal status, on fact, but not itself a matter of fact. If, however, the sense be so restricted, the phrase "illegitimate in fact" is difficult to give a meaning to. If it imports that there are two kinds of illegitimacy, illegitimacy in law and illegitimacy in fact, this prompts the question: How can a person be illegitimate at all if he is not illegitimate in law? The clue to the problem set by the language of the judgment is probably to be found in the various meanings, or shades of meaning, attaching both popularly and legally to the words "illegitimate" and "bastard."

The Cases Classified.

There are the following main cases, in which "begotten out of wedlock" is used, conformably to what appears to be its sense in the books, to include begotten of a woman, whether married or unmarried, by one who is not then her husband. "Born out of wedlock" covers the cases (*a*) where there is no wedlock, (*b*) where there is subsequent wedlock, (*c*) where there has been wedlock which has ceased to exist; and conceivably (*b*) and (*c*) may happen in the same case. A child may be—

A. Begotten out of wedlock, born out of wedlock—

(i) Where there is no wedlock at all;

(ii) Where begotten of a married woman but not of her husband, and born after wedlock has ceased to exist.

B. Begotten out of wedlock, born in wedlock—

(i) Where begotten of unmarried persons who intermarry before the birth;

(ii) Where begotten of an unmarried woman who is married before the birth to a man not the natural father;

(iii) Where begotten of a married woman but not of her husband, the marriage continuing till birth.

C. Begotten in wedlock, born in wedlock.

D. Begotten in wedlock, born out of wedlock—where at the time of birth the state of wedlock has come to an end by death, dissolution of marriage, or nullification of marriage.

Case A (i) causes no difficulty; the child is illegitimate in every sense. In Case C the child is legitimate in every sense. As to Case D, the law deems every child to be legitimate who is born within "a competent time" after wedlock has ceased. It is with Case B, and the rather special Case A (ii), which goes with it, that difficulties of terminology arise.

For Case A (ii) and Case B (iii), but only when illegitimacy has been declared by process of law, the *Encyclopaedia of English Law* quotes the term "adulterine bastard," and for Case A (i) that of "spurious offspring."

Lay Definitions.

In the *New English Dictionary* "illegitimate" in its specific sense is defined as "not born in lawful wedlock"; and also, with a renvoi to the Courts, as "not recognized by law as lawful offspring." For the word as a substantive, "bastard" is given as a synonym. "Bastard" is "one begotten and born out of wedlock; an illegitimate child." In the *Shorter Oxford Dictionary* "illegitimate" is similarly defined. "Bastard," the substantive, is "one begotten and born out of wedlock," "bastard," the adjective, is said to mean "born out of wedlock." Why the substantive and adjective should differ thus in meaning is not indicated.

In the *New Standard Dictionary* (issued in the United States) "illegitimate" is the wider term, meaning, as an adjective, both "begotten and born out of wedlock," and "unlawfully begotten"; as a substantive, "one born out of wedlock," or "bastard." As in England, there seems to be a curious difference between substantival and adjectival meanings. Similarly "bastard," the adjective, means "born out of wedlock," whilst the substantive means "a child neither born nor begotten in lawful wedlock," or "an illegitimate child." In New York, therefore, B may be illegitimate adjectivally, but is not an illegitimate substantively; is not bastard (adjectivally), but may be a bastard.

Legal Definitions.

Blackstone, *2 Comm.* 247, defines bastards as being "such children as are not born either in lawful wedlock or within a competent time after its determination." Birth is made the sole criterion. Co. Litt., sec. 399, says, "I read in *Fleta* that there bee three kindes of bastards, *viz. manser*, *nothus*, and *spurius*" (meaning the issue respectively of prostitution, of fornication or of adultery by a married man, and of adultery on the part of a married woman), and adds "but we terme them all by the name of bastards that be borne out of lawfull marriage." He goes on, however, to state cases (enlarged since his time) such as the husband's being under the age of procreation, or absent overseas, where a child born within marriage may be a bastard; this is Case B (iii). "But if the issue be borne within a moneth or a day after marriage, betweene parties of full lawfull age, the childe is legitimate." This clearly covers Case B (i); but if it be meant to be read as covering also Case B (ii), it is not modern law.

Of modern books, *Wharton's Law Lexicon* used to begin inauspiciously by offering three derivations of the word "bastard," every one of which is rejected by modern etymologists; the current edition keeps clear

of etymology. Its definition is " one born out of lawful marriage." It adds, " a person born in wedlock may be declared a bastard by legal sentence."

Mozley and Whiteley's Law Dictionary, which can hardly be looked on as of authority, merely says " bastard, in English law, is one that is born of parents not legally married."

The article in *2 Halsbury's Laws of England*, 2nd Ed. 558, is content to follow Coke: " a bastard or illegitimate child is one born out of lawful wedlock "; but makes this cover the case of the adulterine bastard by a forced use of " born," adding " a child may be born out of lawful wedlock . . . because he is the child of a woman who is lawfully married, but upon whom he is begotten by another than her lawful husband." The first passage covers A (i), the second A (ii) and B (iii); if " lawful husband " means husband at time of begetting, the second passage also covers B (ii), which seems to be legally correct, and likewise B (i), which is clean contrary to Coke. The definition cannot be regarded as a happy one.

The article " Bastard " in the *Encyclopaedia of the Laws of England*, 3rd Ed., is to the same effect as Wharton. The definition is twofold: (1) a person not born in lawful wedlock, or within a competent time after its determination; (2) a person who, though so born, has been found by legal process to be illegitimate. It is submitted that this definition completely accords with the effect of the decided cases. It involves, however, a further subdivision of the cases set out above, with the following result:—A (i) is of course a bastard. A (ii) and B (iii) are bastards only after judicial declaration of bastardy; without such declaration, the presumption of legitimacy runs in their favour. B (i) is legitimate, both by the express declaration of Lord Coke, and because, apart from false evidence, there can be no declaration of bastardy. B (ii) is in the same position as B (iii).

The Cases Further Classified.

Adding matters of law to matters of fact, we may therefore subdivide Classes A and B, and assign the legal status of each, thus—

A. Begotten out of wedlock, born out of wedlock—

(i) Where there is no wedlock at all. *Illegitimate.*

(ii) Where begotten of a married woman, but not of her then husband—

(*a*) Until declared a bastard. *Legitimate.*

(*b*) If so declared. *Illegitimate* (the adulterine bastard).

B. Begotten out of wedlock, born in wedlock—

(i) Where begotten of unmarried persons who intermarry before the birth takes place. *Legitimate.*

(ii) Where begotten of an unmarried woman who is married, before the birth takes place, to a man not the natural father—

(*a*) Until declared a bastard. *Legitimate.*

(*b*) If so declared. *Illegitimate.*

(iii) Where begotten of a married woman but not of her husband—

(*a*) Until declared a bastard. *Legitimate.*

(*b*) If so declared, *Illegitimate* (adulterine bastard).

The Child in Taylor *v.* Harley.

The child in question in *Taylor* v. *Harley* was B (iii). At any rate until the matter was referred to the Magistrate under s. 5 (6) of the Legitimation Act, 1939, the child was B (iii) (*a*). The Magistrate, though he was satisfied by admissible evidence that the child was B (iii), considered he had no jurisdiction to pronounce a declaration of bastardy, so the child was still B (iii) (*a*). In the Supreme Court the only pronouncement was an order for mandamus against the Magistrate, which clearly could not create a personal status. Since the Magistrate's action in complying with the mandamus is not a legal finding whether of bastardy or of legitimacy, but only a direction to the Registrar, and the Register is only evidence, the child is still B (iii) (*a*). It seems then that a person " illegitimate in fact " may be a person of Class B (iii) (*a*). If, however, the term is meant to mean a person whose present status of legitimacy is precarious, by reason of a factual flaw of pedigree, and who may be found by legal process to be illegitimate, it covers other persons than those who are liable to be declared adulterine bastards. A decree of nullity of marriage necessarily bastardizes the issue. Persons apparently in Class C or Class B (i) may turn out to belong to Class A (i).

The Meaning of " Illegitimate Person."

Another point of interest in the judgment is the finding that the term " illegitimate person " as used in the Legitimation Act, 1939, includes not only a person who by legal status is illegitimate, but also a person of Class B (iii) (*a*)—with which, by parity of reasoning, goes Class A (ii) (*a*), and probably, since there seems to be no ground for differentiation, Class B (ii) (*a*). There seems little reason why the issue of a marriage declared void should not also benefit. If the ground of nullity was an existing marriage, the death of not the *tertium* but the *primum quid* removes the obstacle, the parents can lawfully marry, and legitimation is effected. If, however, the death and the lawful marriage are not preceded by a decree of nullity, then the issue have never been bastardized, and the principle of *Taylor* v. *Harley* may be invoked for their bastardization and re-legitimation.

The Jurisdiction of a Magistrate.

Finally, the jurisdiction conferred on a Magistrate to pronounce upon grounds for registration as legitimate is declared to include by inference a jurisdiction to make a declaration of bastardy as a step towards re-legitimation. Perhaps a more accurate short title for the statute would be " The Legitimation, Bastardization, and Re-legitimation Act." It is pointed out in the judgment that the Magistrate's pronouncements are valid only for the purposes of the Act, and that the contents of the register are only evidence, and not a judicial finding.

Registers as Evidence.

Perhaps the decision that most strikingly brings out this point is one of the earlier cases: *Ex parte Stanford*, (1841) 1 Q.B. 886, 113 E.R. 1371. It was abundantly proved that the registration entry was that of a supposititious child, and was made for fraudulent purposes; but the Court held that there was no power either in the Registrar or the Court to cause the Register to be altered. The functions of the Registrar were purely

ministerial, to record such matters as the statute required him to record, when stated to him. It was for the parties concerned to preserve such evidence as would, in case of need, discount any evidence to be drawn from the entries in the Register.

JUDICIAL ADJUSTMENT OF STATUTES.

The decision in *Taylor* v. *Harley* may be a beneficent one—it is certainly benevolent—and nobody is likely to challenge it. It is true that if usage should ever differentiate between the legitimate and the legitimated, as between freeman and freedman, in the way that gave St. Paul social superiority over the Chief Captain, the person who has taken advantage of *Taylor* v. *Harley* may be socially in worse case than he who has not. The decision will, however, remain a noteworthy instance amongst those cases where the Court has found it possible to meet a position which (it is morally obvious) was not present to the mind of the draftsman. Seeing that it is directed to the rather paradoxical purpose of according registrational evidence of legitimation to persons who are already legitimate according to the Register—that is to say, of giving a fresh legitimate registered pedigree to persons who already enjoy a legitimate registered pedigree, but are liable to be declared illegitimate—it is not surprising if it reaches its end by implications that may be equally paradoxical.

IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE.

Imposed under the Justices of the Peace Act, 1927.

The Summary Penalties Act, 1939, which repeals those sections of the Justices of the Peace Act, 1927, which prescribed the procedure relating to the enforcement of fines and provides a new procedure therefor, incorporates in that procedure two new principles—namely, (1) that except in special circumstances a person fined for an offence shall not at that time be sentenced to a term of imprisonment in default of payment of that fine; and (2) that the defendant shall not subsequently be ordered to be imprisoned merely because he had not had the means of paying the fine.

The new principles referred to above were adopted in England by the Money Payments (Justices Procedure) Act, 1935. The New Zealand statute is not completely analogous to the English Act, but there is sufficient similarity to render of considerable interest the recent decision in *The King* v. *Woking Justices*, [1942] 2 All E.R. 179. The applicant in that case had been charged before the Woking Justices with breaches of certain orders relating to the limitation of supplies and had been convicted on ten charges and fine £150 on each charge, and the Justices had abstained from imposing imprisonment and had granted the applicant time to pay the fine. He defaulted in payment in five cases and pursuant to the procedure imposed by the Money Payments (Justices Procedure) Act, 1935, the Justices thereupon ordered him to attend before them for inquiry as to his means. It then appeared that he had filed his petition in bankruptcy and that he had no means of paying the fines; but, notwithstanding those facts, the Justices had made an order that he be committed to prison unless he paid the fines. The applicant contended that the Justices had no jurisdiction to make this order committing him to prison and applied for an order of certiorari to quash it. This application was heard before Viscount Caldecote, Lord Chief Justice, and Humphreys and Tucker, JJ., and the decision of the Court was delivered by Viscount Caldecote, who after reviewing the facts, said, at p. 181:

> It was argued for the Magistrates that they made the order in pursuance of the power, which they had in the case of a grave offence like this, to send a man to prison. In the first place, it occurs to me to say that that was assuming a power to do something which the Court which convicted the applicant had power to do, as I have already said, but I can find nothing in this legislation to satisfy me that the Magistrates who were inquiring into the means of the applicant were endowed with power to pass a sentence in respect of the offence of which the person in question had been convicted before a Court on an earlier occasion.

And later on the same page:

> The argument, put briefly but, I think, correctly, is simply this, that, if the tribunal think it is a bad case, they must hold an inquiry as to the means of the defendant, but, even in cases where it is ascertained that he has no means they may still commit him to prison. That seems to me to be quite contrary to the intention of the Act.

And at p. 182:

> I cannot bring myself to believe that the Legislature in enacting that subsection intended anything so futile as to order an inquiry and to devise the machinery contained in section 11, although at the same time the intention and the meaning of the legislation was that the Magistrates might turn a blind eye to the results of the inquiry. . . . I think the intention of this section was, subject to the proviso dealing with cases of gravity or special circumstances, to prevent a person being committed to prison in the circumstances stated in the subsection, if the Magistrates were satisfied or found that he had no means to enable him to pay.

The Justice of the Peace and Local Government Review of August 1, 1942, states at p. 363, that the decision in this case is entirely opposed to the interpretation placed upon the relevant sections by Courts of Summary Jurisdiction all over the country, and contrasts the Lord Chief Justice's remarks concerning the intention of the Legislature with a Home Office letter and memorandum issued to Clerks to Justices on November 8, 1935, upon the working of the Act. At p. 2, para. 2, of the letter appears the following:—

> The Act does not prevent the Justice from sending to prison offenders whose failure to pay fines is due to lack of means, if the Justice considered that, in default of payment, imprisonment is the appropriate penalty for the offence, but it requires that if this course is taken, it shall be taken advisedly, and as a general rule after investigation of the defaulter's circumstances.

And at p. 10 of the memorandum, para. 4, appears the following:—

> If the default is due to lack of means, due weight should be given to this consideration; but there is nothing to prevent

> the Justice from committing to prison those offenders who are found on inquiry to be without means to pay the fine, if imprisonment is the alternative penalty appropriate to the offence.

In a later issue the *Journal* notes that the Home Office has revised this circular to Clerks to Justices.

Although the New Zealand procedure differs in detail from that presented under the English statute, the New Zealand statute may be taken to have the same general object as the English Act, namely,—

> to prevent a person being committed to prison . . . if the Magistrates were satisfied or found that he had no means to enable him to pay.

Section 4 of our statute sets out that, except as provided under s. 10 where Justices adjudge or order any person to pay a sum of money, they shall not on that occasion impose on him a period of imprisonment in default of payment of that sum. And s. 10 sets out that if the Justices *hearing a case* are of opinion—

(*a*) That the defendant is of sufficient means to pay forthwith; or

(*b*) That the defendant has no fixed place of abode; or

(*c*) That for any other reason having reference to the gravity of the offence, the character of the defendant, or other special circumstances, execution should issue forthwith—

they may direct that a warrant of distress may be issued forthwith, or they may impose on the defendant a period of imprisonment in default of payment of the sum and may direct that a warrant of commitment be issued in the first instance.

The position, therefore, is that whenever a fine is inflicted, or costs ordered to be paid in criminal proceedings before Justices of the Peace, either because a fine is the only penalty provided by the relevant statute or because the Justices consider that the imposition of a fine will meet the circumstances of the case, then the Justices are generally prohibited from thereupon imposing a term of imprisonment in default of payment of the fine; but in special cases coming within the ambit of s. 10 they may impose a term of imprisonment in default of payment of the fine. It should be noted here that this discretion is to be exercised by Justices *hearing a case* and that if the Justices make a direction under s. 10 a record of that direction and of the grounds upon which it is made must be entered in the criminal-record book.

In cases where a fine is imposed or costs are ordered to be paid and no order is made under s. 10, the procedure for enforcement of the fine is set out in s. 9 and ss. 11 to 14.

Section 9 provides that in all cases where any sum of money ordered or adjudged to be paid is not paid within fourteen days, or within such further time as may be allowed, any Justice may issue a warrant of distress to levy the amount due.

Section 11 requires that whenever the person having the execution of a warrant of distress makes a return that he can find no sufficient goods on which to levy the sums mentioned, he shall make a report as to the means of the defendant so far as he has been able to ascertain them.

Section 12 gives power to Magistrates to issue warrants of commitment for non-payment of fines under the conditions set out in that section. The Magistrate to whom any application is made for the issue of a warrant of commitment is required to consider the report made under s. 11 and "to make such further inquiry *into the circumstances of the default* as he considers necessary." He may thereafter, if he is of opinion that it is in the interests of justice so to do, either—

(*a*) Issue his warrant of commitment directing the imprisonment of the defendant for such time as the Magistrate thinks reasonable (not exceeding the appropriate maximum periods prescribed in s. 13); or

(*b*) Issue his warrant of commitment in respect of a sum less than the amount due under the convictional order; or

(*c*) Direct that the issue of a warrant be postponed for such time or subject to such conditions as he thinks fit; or

(*d*) Direct that no warrant be issued.

If the Magistrate directs that no warrant be issued, or issues a warrant for a sum less than the amount due, then the amount due, or as the case may be the difference between the amount due and the sum in respect of which the warrant is issued is deemed to be remitted and no further action is to be taken for the recovery therefor.

It is clear that, when considering whether or not he should issue his warrant of commitment, the Magistrate cannot on that occasion invoke the powers given by s. 10 since those powers must be exercised at the hearing by the Justices hearing the case.

The remaining question is whether the Magistrate has a general discretion under s. 12 to take into account the gravity of the offence as well as the means of the defendant, or whether his inquiry is limited to the question of means. It would seem that he is limited to the question of means. For one thing, although the statute gives the Justices hearing the case a discretion to order imprisonment in default of payment of fine, it does not give an unfettered discretion; it gives only a discretion to order imprisonment where the case comes within the conditions set out in s. 10. It would impose strain on the ordinary canons of construction to hold that whereas the Justices who heard a case could order imprisonment only in certain circumstances, a Magistrate could later, and without hearing the case, exercise an unlimited discretion to impose imprisonment in any circumstances. Furthermore, although s. 12 gives a Magistrate a very general discretion—note the provision that he may "if he is of opinion that it is in the interests of justice so to do either . . . "—that discretion is limited to the scope of the inquiry—namely, to "consider the report" as to means "and to make such further inquiry *into the circumstances surrounding the default* as he considers necessary."

It seems clear, therefore, that if the Justices hearing a case do not impose a term of imprisonment as authorized by s. 10, a Magistrate before whom these proceedings subsequently come in the form of an application under s. 12 is limited to a consideration of the defendant's means, and may not at that inquiry reopen the question of the gravity of the offence, which can be determined only by the Justices hearing the case.

INCOME-TAX RETURNS.

Trustees' Statements and Declarations.

With the approach of the date for the furnishing of Annual Returns of Income, trustees and agents of estates are reminded of the necessity for a supporting statement which is required by the Commissioner of Taxes on the special form (Trustee Statement) provided for the purpose.

To conserve paper the supply of forms has been reduced to a minimum, and the Commissioner urges those needing forms to submit to him a list, in alphabetical order, of estates and trusts being administered by them, so that an adequate bulk supply of trustees' statements and Social Security declaration forms can be forwarded for each year's requirements.

By sending in their list of names of estates, the trustees will ensure for themselves without further application a regular and ample annual supply of forms from the Commissioner of Taxes.

THE LATE MR. STANLEY S. BOND.

Chairman of Directors of Butterworths.

In his book of recollections, *Change and Decay*, Sir Arthur Underhill has this to say of Mr. Stanley Bond, Chairman of the Butterworth organization, whose death has just been announced:—

> I think that it was early in the twentieth century that Mr. Stanley Bond, then a very young man who had recently acquired the goodwill of the ancient law publishing business of Butterworth and Co., called at my chambers and expounded a project of his own which seemed to me very ambitious—*viz.*, to publish in a set of twenty large volumes, a complete library of legal forms and precedents other than Court forms. Of this heavy work he was so good as to offer me the General Editorship. I was considerably alarmed about the project, particularly on his account; for I saw at once that the outlay would be extremely heavy, and (as I told him) I considered that the members of the Bar were wedded to the precedents of Key and Elphinstone (the authors of which both Conveyancing Counsel of the Court), and that the solicitor branch of the profession were equally attached to Prideaux's precedents. He, however, said that before he embarked on the speculation, he was going to circularize every solicitor on the Roll, and that unless he got at least enough subscribers to obviate loss, he should drop the idea. On that understanding and also on his promise that I should have a choice in the selection of authors who were to draft the precedents and notes, I agreed to be the general editor.
>
> To my astonishment, he turned out right, and within (I think) a month, he had obtained contracts for the sale of 1,500 sets of twenty volumes each at 18s. per volume, and the sale very soon ran up to several thousands at 50 per cent. increase in the price—a wonderful triumph of commercial foresight. I had the honour of being again general editor of the Second Edition in 1926, after Lord Birkenhead's Acts had come into force.
>
> Mr. Stanley Bond was so pleased with the success of the *Encyclopaedia of Forms and Precedents* that a few years afterwards he conceived an even greater *tour de force*, and obtained no less a person than the Lord Chancellor, the Earl of Halsbury, as its general editor. I refer to that immense code of English law known as *Halsbury's Laws of England*, the first volume of which appeared in 1907, and the concluding volume (31; General Index) in 1917, notwithstanding the delay caused by the Great War. The Working Editor of that work was Sir Thomas Willes Chitty (Bart.), the Senior Master of the King's Bench Division. The Revising Editors were Mr. Justice Swinfen Eady (afterwards Lord Swinfen, M.R.) and T. H. Carson, K.C., for Equity titles, Sir T. Willes Chitty himself, for Common Law titles, William Mackenzie (now Lord Amulree) for Local Government titles, and myself for Real Property and Conveyancing titles.
>
> It had a great sale, not only in England, but also in the Colonies and America, and a second edition under the General Editorship of the present Lord Chancellor (Viscount Hailsham) is now going through the Press, the Managing Editor being Mr. Roland Burrows, K.C. The Revising Editors are—for Common Law, Lord Atkin; for Commercial Law, Lord Roche (both Lords of Appeal); and for Equity and Conveyancing subjects, my unworthy self. I suppose that the new edition will be finished in about two years, twenty-six volumes having already been issued, and about ten more being due at the rate of four volumes per year.

Thus, Sir Arthur Underhill, in 1937, epitomised the life-work of Mr. Stanley Shaw Bond, whose family had been connected with law publishing for over one hundred years, during which time they have owned the *Justice of the Peace and Local Government Review*.

The firm of Butterworth and Company is still older, and was begun at 7 Fleet Street, a house that was once occupied by Richard Tottel, Law Publisher under Royal Patents in the successive reigns of King Edward VI, Queen Mary, and Queen Elizabeth, whose Law Publisher he became. In the late 'nineties of the last century, the late Mr. Bond's father, after the death of Mr. Joshua Butterworth, bought the goodwill of the business for his son who soon put new life into the firm.

The late Mr. Bond saw things in a big way, and his vision has lightened the work of many a lawyer. First, he conceived the idea of the *Encyclopaedia of Forms and Precedents*. The common law of England is not codified, but in creating *Halsbury's Laws of England* in 1907, Mr. Bond did more than any one else has ever done to present it in complete form and in comparatively small compass. In originating and completing this great work, Mr. Bond attained the greatest achievement so far attained in the history of legal publishing. No less notable an undertaking was the complementary publication, the *English and Empire Digest*, which enormous task Mr. Bond began in 1917, as soon as the last *Halsbury* volume had left the press. The fact that a world war was raging at the time did not daunt him; and, with the issue of the first volume in 1919, down to the appearance of the general index

in 1930, another milestone in legal publication was passed.

In the midst of the worries of compiling and publishing the *Digest*, the English law of property was substantially altered in 1925; and Mr. Bond went at once to the task of revision of the *Forms and Precedents* to give that work a current value, as the new legislation had rendered much of it out of date after twenty-five years of usefulness. The new edition was ready for practitioners in 1926, contemporaneously with the commencement of the operation of what to them were the new revolutionary changes in long understood conveyancing practice.

The common law and the cases had been brought together by Mr. Bond in two series of volumes; the statutes remained in a chaotic state and ranged over some hundreds of volumes. Mr. Bond, with undaunted spirit, undertook the compilation of *Halsbury's Complete Statutes of England* which first saw the light of day in 1929.

In 1931, the first volume of *Halsbury's Laws of England* was twenty years old, and the development of the common law in that period necessitated an up-to-date and improved edition. So, under the general Editorship of the then Lord Chancellor, Viscount Hailsham, the great task of compilation, organization, and publication was again commenced. It had long been the principal working-tool of the common-law practitioner in New Zealand and Australia, and with his ever-present consideration for the better equipment of members of the profession, Mr. Bond conceived the idea of the *Pilot*, so as to bring the common law, complete with its local modifications or adaptations, to the user of *Halsbury's Laws* in those countries. The last volume of this Edition has just reached the Dominion. The great subject of adjectival law remained, and, so Mr. Bond gave the profession something new, both in its scope and in its execution, the *Encyclopaedia of Court Forms and Precedents*, which began to appear in 1937, under the General Editorship of Lord Atkin.

Another evidence of Mr. Bond's foresight was the compilation of a fourteen-volume work, the *Encyclopaedia of Local Government Law*, for the specialist in local body law in Great Britain. This appeared in 1934. The field of law in its other specialized features is covered by many text-books, and in all of these Mr. Bond's hand is seen in the selection of authors and completeness of treatment.

Legal periodicals were Mr. Bond's special care. In 1923, he acquired the old-established periodical, the *Law Journal* (London), which, in its improved form, is found all over the world. He had visited New Zealand and Australia in 1911, and Canada saw him a frequent visitor. His interest in the overseas Dominions never flagged; and, after he had established the Australian Company in Sydney, he extended its operation to the Dominion in the early part of 1914. Fruits of his interest and energy are the *New Zealand Law Journal*, in which he took a particular interest, and the *Public Acts of New Zealand* (*Reprint*), *1908–1931*, which was planned by him in consultation with its general editor.

Mr. Bond was proud of the *All England Law Reports* which his *Law Journal* company began in 1936, as he felt that the established reports could be improved upon; so, with the introduction of editorial notes and annotations, he set out to provide innovations that he considered would fill the entire requirements of the profession.

Mr. Bond, at the time of his death, was in his late sixties. Though not known to the majority of New Zealand practitioners, his ready welcome and great hospitality to those who visited London will not be forgotten. In the last forty-five years, he built up an organization that has no equal anywhere. He devoted his days to service of the profession wherever the English tongue is spoken. His monument is reproduced on the shelves of every practitioner's office.

Unlike most visionaries, Mr. Bond had the practical ability to translate his dreams into realities. His energy, organizing ability, and clear thinking built up a great world-wide firm; and, with its building, members of the legal profession everywhere shared in the fruits of his publishing genius. He strove to serve them in providing simplification of their work and in the production of concise, up-to-date, and always efficient tools of trade. These increased the practitioners' efficiency and thus improved the assistance they could give to those whom they, in turn, strove to serve.

RECENT BATTLE HONOURS.

Practitioners Again Prominent.

In the latest list of battle honours awarded to New Zealanders, Brigadier L. M. Inglis, D.S.O., who practised as a member of the firm of Messrs. Inglis and Inglis, Timaru, before he went overseas with the main body of the Second New Zealand Expeditionary Force, received a bar to his D.S.O., "for most brilliant service and brilliant leadership while in temporary command of the Second New Zealand Division." The citation says: "He took over command at the close of the Battle of Minquar Quaim, on June 27, and was responsible for extricating the division from the covering position that night. He directed the successful withdrawal to the Alamein line and immediately carried out the reorganization of the division for the fighting which followed, at once stabilizing the position. During the whole period he displayed great skill and determination, his personal direction and courage being a constant inspiration to every one under his command."

In the same list, Captain J. C. White, LL.M., who was Associate to the Hon. Mr. Justice Ostler for some years, and a former editor of the Students' Supplement to the LAW JOURNAL, was awarded the M.B.E. He has served throughout as Secretary to Lt.-Gen. Sir Bernard Freyberg, V.C.

PRACTICAL POINTS.

This service is available free to all paid annual subscribers, but the number of questions accepted for reply from subscribers during each subscription year must necessarily be limited, such limit being entirely within the Publishers' discretion. Questions should be as brief as the circumstances will allow; the reply will be in similar form. The questions should be typewritten, and sent in duplicate, the name and address of the subscriber being stated, and a stamped addressed envelope enclosed for reply. They should be addressed to: "NEW ZEALAND LAW JOURNAL" (Practical Points), P.O. Box 472, Wellington.

1. Stamp Duties.—*Memorandum of Association—Change of Mind—Refund of Stamp Duty.*

QUESTION: A memorandum of association in respect of a proposed company to be registered under the Companies Act is duly signed by the subscribers and stamped at 15s. at the Stamp Office. Subsequently the subscribers change their minds and decide not to incorporate the company. Can a refund of the stamp duty paid be made?

ANSWER: In the circumstances no refund can be granted. A careful examination of s. 53 of the Stamp Duties Act, 1923, and s. 12 of the Stamp Duties Amendment Act, 1926, shows that neither section authorizes a refund in such a case, and there is no other provision which can be invoked.

2. Companies.—*Annual License Fee—Company in Liquidation—Receiver acting.*

QUESTION: A short time ago a company passed a resolution to go into voluntary liquidation; about the same time the debenture-holders in pursuance of the authority conferred by the debentures appointed A. and B. receivers; and since then A. and B. have been continuing the business. Are A. and B. liable for the annual license fee?

ANSWER: No. The receivers are not the agents of the company in carrying on the business: *Thomas* v. *Todd*, [1926] 2 K.B. 511. A. and B. would be liable had the company not gone into liquidation.

3. Building Societies.—*Repayment of Moneys received on Deposit—Whether Stamped Receipt necessary.*

QUESTION: A non-member deposits £200 with a building society duly registered under the Building Societies Act. When the moneys are repaid by the society, does a receipt for the moneys have to be stamped?

ANSWER: Yes; a 2d. stamp is necessary. The reason is that s. 46 (*i*) of the Building Societies Act, 1908, must be construed *ejusdem generis* with the preceding exemptions in accordance with the *ratio decidendi* of the leading English case: *Re Royal Liver Friendly Society*, (1870) L.R. 5 Exch. 78; and see also *Willis* v. *Ongley*, (1915) 34 N.Z.L.R. 967.

4. Probate and Administration.—*Administration Bond—Sureties—Application to dispense with Sureties.*

QUESTION: In an estate, where letters of administration are being applied for, it is desired to make application to dispense with sureties. Can the application be incorporated in the motion for letters of administration, and, if so, is it the practice to seal a separate order dispensing with sureties? What are the usual conditions before which such an order will be made?

ANSWER: Yes, the application can be incorporated in the motion, and it is not the practice to seal a separate order. With regard to the practice concerning dispensation of sureties, see *In re Morrison*, (1931) 7 N.Z.L.J. 115, and *In re Brown*, [1939] N.Z.L.R. 93.

RULES AND REGULATIONS.

Dairy Produce Export Prices Order, 1939, Amendment No. 1 (Marketing Act, 1936.) No. 1943/27.
Government Service Boards Elections Emergency Regulations, 1943. (Emergency Regulations Act, 1939.) No. 1943/28.
Purchase of Scheelite Order, 1943. (Marketing Amendment Act, 1939.) No. 1943/29.
War Damage Regulations, 1941, Amendment No. 2. (War Damage Act, 1941.) No. 1943/30.
Forest (Fire-prevention) Regulations, 1940, Amendment No. 1. (Forests Act, 1921-22.) No. 1943/31.
Industrial Efficiency Emergency Regulations, 1943. (Emergency Regulations Act, 1939.) No. 1943/32.
Breadmaking Industry Control Order, 1943. (Regulations Act, 1936.) No. 1943/33.
Social Security Contribution (Companies) Regulations, 1943. (Social Security Act, 1938.) No. 1943/34.